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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
13 Against:

14 **SARAH RAE BINDER**

15 **Registered Nurse License Applicant**

16 Respondent.

Case No. 2013-447

DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

17 **FINDINGS OF FACT**

18 1. On or about December 4, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her
19 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
20 Consumer Affairs, filed Statement of Issues No. 2013-447 against Sarah Rae Binder
(Respondent) before the Board of Registered Nursing.

21 2. On or about April 9, 2012, Respondent filed an application dated April 4, 2012, with
22 the Board of Registered Nursing to obtain a Registered Nurse License.

23 3. On or about June 27, 2012, the Board issued a letter denying Respondent's application
24 for a Registered Nurse License. On or about July 25, 2012, Respondent appealed the Board's
25 denial of her application and requested a hearing.

26 4. On or about December 4, 2012, an employee of the Board of Registered Nursing
27 served by Certified and First Class Mail a copy of the Statement of Issues No. 2013-447,
28 Statement to Respondent, Notice of Defense, Request for Discovery, Government Code sections

1 11507.5, 11507.6, and 11507.7, Notice from Respondent/Applicant, and Disciplinary Guidelines
2 to Respondent's address on the application form. A copy of the Statement of Issues is attached as
3 Exhibit A, and is incorporated herein by reference.

4 5. Service of the Statement of Issues was effective as a matter of law under the
5 provisions of Government Code section 11505, subdivision (c).

6 6. On or about January 8, 2013, Respondent filed a Withdrawal of Notice of
7 Defense/Request for Hearing in this matter. The Withdrawal of Notice of Defense/Request for
8 Hearing is attached as Exhibit B, and is incorporated herein by reference.

9 7. Business and Professions Code section 118 states, in pertinent part:

10 (a) The withdrawal of an application for a license after it has been filed with a
11 board in the department shall not, unless the board has consented in writing to such
12 withdrawal, deprive the board of its authority to institute or continue a proceeding
against the applicant for the denial of the license upon any ground provided by law or
to enter an order denying the license upon any such ground.

13 8. Government Code section 11506 states, in pertinent part:

14 (c) The respondent shall be entitled to a hearing on the merits if the respondent
15 files a notice of defense, and the notice shall be deemed a specific denial of all parts
16 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

17 9. California Government Code section 11520 states, in pertinent part:

18 (a) If the respondent either fails to file a notice of defense or to appear at the
19 hearing, the agency may take action based upon the respondent's express admissions
20 or upon other evidence and affidavits may be used as evidence without any notice to
21 respondent; and where the burden of proof is on the respondent to establish that the
respondent is entitled to the agency action sought, the agency may act without taking
evidence.

22 10. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on
24 evidence on file herein, finds that the allegations in Statement of Issues No. 2013-447 are true.

25 DETERMINATION OF ISSUES

26 1. Based on the foregoing findings of fact, Respondent Sarah Rae Binder has subjected
27 her application for a Registered Nurse License to denial.

28 ///

2. Service of Statement of Issues No. 2013-447 and related documents was proper and in accordance with the law.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Registered Nursing is authorized to deny Respondent's application for licensure based upon the following violations alleged in the Statement of Issues:

a. Respondent's application is subject to denial under sections 480, subdivision (a)(1) and 2671, subdivision (f) of the Code in that on or about September 19, 2008, in a criminal proceeding entitled *State of South Dakota v. Sarah R. Binder*, in the County of Yankton, First Judicial Circuit Court, docket number 66399M0802248, Respondent was convicted on her plea of guilty to violating South Dakota Codified Laws (SDCL) section 35-9-2, purchase, possession, or consumption of alcoholic beverage by a person under twenty-one years, a Class 2 misdemeanor, a crime substantially related to the qualifications, duties, and functions of a registered nurse.

b. Respondent's application is subject to denial under sections 480, subdivision (a)(1) and 2671, subdivision (f) of the Code in that on or about September 9, 2009, in a criminal proceeding entitled *State of South Dakota v. Sarah R. Binder*, in the County of Clay, First Judicial Circuit Court, docket number 1339M0901479, Respondent was convicted on her plea of guilty to violating SDCL section 35-9-2, purchase, possession, or consumption of alcoholic beverage by a person under twenty-one years, a Class 2 misdemeanor, a crime substantially related to the qualifications, duties, and functions of a registered nurse.

c. Respondent's application is subject to denial under sections 480, subdivision (a)(1) and 2671, subdivision (f) of the Code in that on or about December 29, 2010, in a criminal proceeding entitled *State of South Dakota v. Sarah R. Binder*, in the County of Yankton, First Judicial Circuit Court, docket number 66C10000746A0, Respondent was convicted on her plea of guilty to violating SDCL section 32-23-2, driving under the influence, a Class 1 misdemeanor, a crime substantially related to the qualifications, duties, and functions of a registered nurse.

///

1 d. Respondent's application is subject to denial under section 480,
2 subdivision (a)(3)(A) of the Code in that on multiple occasions, she used alcoholic beverages to
3 an extent or in a manner that was dangerous and injurious to herself and the public, a ground for
4 discipline under section 2762, subdivision (b) of the Code for a licensed registered nurse.

5 e. Respondent's application is subject to denial under sections 480,
6 subdivision (a)(3)(A) of the Code in that on multiple occasions, she was convicted of criminal
7 offenses involving the consumption of alcohol, a ground for discipline under section 2762,
8 subdivision (c) of the Code for a licensed registered nurse.

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26 Attachment:

27 Exhibit A: Statement of Issues No. 2013-447

28 Exhibit B: Respondent's Withdrawal of Notice of Defense/Request for Hearing

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues
Against:

SARAH RAE BINDER

Registered Nurse License Applicant

Respondent.

Case No. 2013-447

DECISION AND ORDER

IT IS SO ORDERED that the application for Registered Nurse License, filed by Respondent Sarah Rae Binder, is denied.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on MAY 23, 2013.

It is so ORDERED APRIL 23, 2013.



FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

Exhibit A

Statement of Issues No. 2013-447

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

Case No. 2013-447

13 **SARAH RAE BINDER**

STATEMENT OF ISSUES

14 **Registered Nurse License Applicant**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about April 9, 2012, the Board of Registered Nursing, Department of
23 Consumer Affairs received an application for a Registered Nurse License from Sarah Rae Binder
24 (Respondent). On or about April 4, 2012, Sarah Rae Binder certified under penalty of perjury to
25 the truthfulness of all statements, answers, and representations in the application. The Board
26 denied the application on June 27, 2012.

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42:00 PM 1-23-2013
41:00 PM 1-23-2013

JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3)(A) Done any act that if done by a licentiate of the business or profession in
2 question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the crime
4 or act is substantially related to the qualifications, functions, or duties of the business
5 or profession for which application is made.

6 (b) Notwithstanding any other provision of this code, no person shall be denied
7 a license solely on the basis that he or she has been convicted of a felony if he or she
8 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
9 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
10 convicted of a misdemeanor if he or she has met all applicable requirements of the
11 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
12 person when considering the denial of a license under subdivision (a) of Section 482.

13 (c) A board may deny a license regulated by this code on the ground that the
14 applicant knowingly made a false statement of fact required to be revealed in the
15 application for the license.

16 7. Section 482 of the Code states:

17 Each board under the provisions of this code shall develop criteria to evaluate
18 the rehabilitation of a person when:

19 (a) Considering the denial of a license by the board under Section 480; or

20 (b) Considering suspension or revocation of a license under Section 490.

21 Each board shall take into account all competent evidence of rehabilitation
22 furnished by the applicant or licensee.

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or to
26 suspend or revoke a license or otherwise take disciplinary action against a person who
27 holds a license, upon the ground that the applicant or the licensee has been convicted
28 of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

9. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or
deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the
following:

1
2 (f) Conviction of a felony or of any offense substantially related to the
3 qualifications, functions, and duties of a registered nurse, in which event the record of
4 the conviction shall be conclusive evidence thereof.

5
6 10. Section 2762 of the Code states:
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8 In addition to other acts constituting unprofessional conduct within the meaning
9 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
10 licensed under this chapter to do any of the following:
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13 (b) Use any controlled substance as defined in Division 10 (commencing with
14 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
15 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
16 dangerous or injurious to himself or herself, any other person, or the public or to the
17 extent that such use impairs his or her ability to conduct with safety to the public the
18 practice authorized by his or her license.

19 (c) Be convicted of a criminal offense involving the prescription, consumption,
20 or self-administration of any of the substances described in subdivisions (a) and (b) of
21 this section, or the possession of, or falsification of a record pertaining to, the
22 substances described in subdivision (a) of this section, in which event the record of
23 the conviction is conclusive evidence thereof.
24

25 11. Section 2765 of the Code states:
26
27 A plea or verdict of guilty or a conviction following a plea of nolo contendere
28 made to a charge substantially related to the qualifications, functions and duties of a
registered nurse is deemed to be a conviction within the meaning of this article. The
board may order the license or certificate suspended or revoked, or may decline to
issue a license or certificate, when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under the
provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

1 (a) Assaultive or abusive conduct including, but not limited to, those violations
2 listed in subdivision (d) of Penal Code Section 11160.

3 (b) Failure to comply with any mandatory reporting requirements.

4 (c) Theft, dishonesty, fraud, or deceit.

5 (d) Any conviction or act subject to an order of registration pursuant to Section
6 290 of the Penal Code.

7 13. California Code of Regulations, title 16, section 1445 states:

8 (a) When considering the denial of a license under Section 480 of the code, the
9 board, in evaluating the rehabilitation of the applicant and his/her present eligibility
10 for a license will consider the following criteria:

11 (1) The nature and severity of the act(s) or crime(s) under consideration as
12 grounds for denial.

13 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
14 under consideration as grounds for denial which also could be considered as grounds
15 for denial under Section 480 of the code.

16 (3) The time that has elapsed since commission of the act(s) or crime(s)
17 referred to in subdivision (1) or (2).

18 (4) The extent to which the applicant has complied with any terms of parole,
19 probation, restitution, or any other sanctions lawfully imposed against the applicant.

20 (5) Evidence, if any, of rehabilitation submitted by the applicant.

21
22 **FIRST CAUSE FOR DENIAL OF APPLICATION**

23 **(September 19, 2008 Criminal Conviction for Consumption
24 of Alcohol by a Minor on August 30, 2008)**

25 14. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
26 and 2671, subdivision (f) of the Code in that she was convicted of a crime substantially related to
27 the qualifications, duties, and functions of a registered nurse. The circumstances are as follows:

28 a. On or about September 19, 2008, in a criminal proceeding entitled *State of
South Dakota v. Sarah R. Binder*, in the County of Yankton, First Judicial Circuit Court, docket
number 66399M0802248, Respondent was convicted on her plea of guilty to violating South
Dakota Codified Laws (SDCL) section 35-9-2, purchase, possession, or consumption of alcoholic
beverage by a person under twenty-one years, a Class 2 misdemeanor.

1 b. As a result of the conviction, on or about September 19, 2008, Respondent
2 was ordered to pay \$104 in fines and costs, and her driver's license was suspended for 30 days.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

4 **(September 9, 2009 Criminal Conviction for Consumption**
5 **of Alcohol by a Minor on September 7, 2009)**

6 15. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
7 and 2671, subdivision (f) of the Code in that she was convicted of a crime substantially related to
8 the qualifications, duties, and functions of a registered nurse. The circumstances are as follows:

9 a. On or about September 9, 2009, in a criminal proceeding entitled *State of*
10 *South Dakota v. Sarah R. Binder*, in the County of Clay, First Judicial Circuit Court, docket
11 number 1339M0901479, Respondent was convicted on her plea of guilty to violating SDCL
12 section 35-9-2, purchase, possession, or consumption of alcoholic beverage by a person under
13 twenty-one years, a Class 2 misdemeanor.

14 b. As a result of the conviction, on or about September 9, 2009, Respondent
15 was ordered to pay \$104 in fines and costs, and her driver's license was suspended for 60 days.

16 **THIRD CAUSE FOR DENIAL OF APPLICATION**

17 **(December 29, 2010 Criminal Conviction for DUI on November 27, 2010)**

18 16. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
19 and 2671, subdivision (f) of the Code in that she was convicted of a crime substantially related to
20 the qualifications, duties, and functions of a registered nurse. The circumstances are as follows:

21 a. On or about December 29, 2010, in a criminal proceeding entitled *State of*
22 *South Dakota v. Sarah R. Binder*, in the County of Yankton, First Judicial Circuit Court, docket
23 number 66C10000746A0, Respondent was convicted on her plea of guilty to violating SDCL
24 section 32-23-2, driving under the influence, a Class 1 misdemeanor. Respondent's blood alcohol
25 concentration was .136 percent.

26 b. As a result of the conviction, on or about December 29, 2010, Respondent
27 was sentenced to 14 days in the Yankton County Jail, suspended, granted 360 days probation, and
28 ordered pay fines and costs. Respondent's driver's license was revoked for 120 days.

1 **FOURTH CAUSE FOR FOR DENIAL OF APPLICATION**

2 **(Dangerous Use of Alcohol)**

3 17. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)
4 of the Code in that on or about August 30, 2008, September 7, 2009, and November 27, 2010, as
5 described in paragraphs 14-16, above, Respondent used alcoholic beverages to an extent or in a
6 manner that was dangerous and injurious to herself and the public. Such conduct would be a
7 ground for discipline under section 2762, subdivision (b) of the Code for a licensed registered
8 nurse.

9 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

10 **(Conviction of Alcohol-Related Offenses)**

11 18. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
12 of the Code in that on or about September 19, 2008, September 9, 2009, and December 29, 2010,
13 Respondent was convicted of criminal offenses involving the consumption of alcohol as
14 described in paragraphs 14-16, above. Such conduct would be a ground for discipline under
15 section 2762, subdivision (c) of the Code for a licensed registered nurse.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Board of Registered Nursing issue a decision:

- 19 1. Denying the application of Sarah Rae Binder for a Registered Nurse License.
20 2. Taking such other and further action as deemed necessary and proper.

21
22 DATED: December 4, 2012

23 *Louise R. Bailey*
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

24
25
26
27 SD2012704123

Exhibit B

Respondent's Withdrawal of Notice of Defense/Request for Hearing

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues
Against:

SARAH RAE BINDER

Respondent.

Case No. 2013-447

**RESPONDENT'S WITHDRAWAL OF
NOTICE OF DEFENSE/REQUEST FOR
HEARING**

In accordance with California Code of Regulations, title 1, section 1014, subdivision (c), I hereby withdraw the Notice of Defense or request for hearing previously filed, and waive my right to hearing in the above entitled matter. I understand that the Board of Registered Nursing shall decide whether to proceed with the hearing as a default, withdraw the matter, or take the matter off calendar and issue a default decision and order. I acknowledge that the outcome of this proceeding or default decision may be discipline up to and including license revocation. I have either consulted with legal counsel or, having been made aware of my right to do so, declined to consult with counsel. This withdrawal and waiver is made knowingly, intelligently, and voluntarily. If counsel has been engaged, counsel's signature in the appropriate section below indicates that counsel has approved this withdrawal and waiver as to form.

Dated:	<u>1-8-13</u>
Respondent's Name:	<u>Sarah R Binder</u>
Respondent's Signature:	<u>S Binder</u>
Respondent's Mailing Address:	<u>3701 E 20th St</u>
City, State and Zip Code:	<u>Sioux Falls SD 57078</u>
Respondent's Telephone:	<u>605-460-2999</u>

Check appropriate box:

- ☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name _____

Counsel's Mailing Address _____

City, State and Zip Code _____

Counsel's Telephone Number _____

- ☒ I am not now represented by counsel.

SD2012704123